

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CAROLYN CLINE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 216,725
<b>THE BOEING COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>INS. COMPANY STATE OF PENNSYLVANIA</b>	)	
<b>C/O AMERICAN INTERNATIONAL GROUP</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from the July 26, 1999, Award of Administrative Law Judge John D. Clark. The Administrative Law Judge denied claimant benefits for her cervical problems, finding claimant had not sustained her burden in proving an increase in her impairment of function for her neck and arm injuries after her work-related injuries from 1991, arising out of and in the course of her employment with respondent. Oral argument was held on December 10, 1999.

**APPEARANCES**

Claimant appeared by her attorney, Tom E. Hammond of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Eric K. Kuhn of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted for the purposes of this Order.

**ISSUES**

- (1) Did claimant suffer personal injury by accident on the date alleged?
- (2) Did claimant's accidental injuries arise out of and in the course of her employment with respondent?
- (3) What, if any, is the nature and extent of claimant's injuries and/or disabilities?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant, a long-term employee for respondent, had a history of back, neck and shoulder problems from the late 1980s. The issue in this case is whether claimant's complaints, which resulted in May 1997 cervical surgery, were related to claimant's job activities with respondent from June 1996 through May 13, 1997, or whether those complaints were a natural result of claimant's previous and ongoing non-work-related cervical problems.

Claimant suffered injuries to her shoulders while working for respondent in 1991. These also included minor neck complaints. That matter was settled for \$22,000 on a lump sum basis.

In 1994, claimant was involved in a severe automobile accident, resulting in a disc protrusion at C6-7. That accident, not related to her employment with respondent, resulted in steel plates being placed in claimant's forehead. At that time, claimant was diagnosed with degenerative disc disease C4-7 and a bulging disc at C6-7. Claimant returned to work in 1996 as a skin polisher, which required repeat use of hand tools. Claimant continued having neck problems after returning to work. Claimant alleges those repetitive traumas have aggravated her condition. In January 1997, claimant was involved in a second non-work-related automobile accident resulting in a broken arm. Claimant returned to work with respondent in March 1997, and was moved to housekeeping. Claimant continued having ongoing problems in her neck and upper extremities. Her last day worked prior to undergoing neck surgery was May 13, 1997.

On May 30, 1997, claimant underwent a cervical discectomy with Paul S. Stein, M.D., secondary to her automobile accident. Claimant was off work after the surgery for approximately ten weeks and, upon release, she returned to work for respondent, again in housekeeping.

Claimant was examined at her attorney's request by Pedro A. Murati, M.D., a board certified physical medicine and rehabilitation specialist, on May 7, 1998. Dr. Murati

diagnosed claimant with post right carpal tunnel release, left carpal tunnel syndrome, bilateral ulnar cubital syndrome, status post anterior cervical discectomy with interbody fusion and autograft bone, and myofascial pain syndrome affecting the neck and shoulder regions. Dr. Murati assessed claimant a 29 percent whole body impairment, which included a 15 percent impairment to the body as a whole for claimant's neck problems, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.

When discussing claimant's cervical problems, Dr. Murati was questioned regarding claimant's preexisting neck injuries. Dr. Murati testified that claimant advised him her problems developed while she was working for respondent during her polishing job. Dr. Murati was provided no documentation regarding a preexisting neck injury. While claimant told him of the 1994 and 1997 car accidents, he was unaware that claimant had suffered any type of neck trauma at that time. Dr. Murati was provided the notes from William M. Shapiro, M.D., who examined and treated claimant in 1994. Dr. Murati agreed that, based upon these findings, claimant would have a preexisting impairment to the neck. He agreed that Dr. Shapiro's restrictions from that surgery would constitute a significant diagnosis. When asked whether it was more probably true than not true that the problems he examined claimant for are a natural and probable progression of her initial neck problems from 1994, Dr. Murati answered yes.

Claimant was also examined by Philips R. Mills, M.D., a board certified physiatrist, as part of a court ordered independent medical examination. Dr. Mills diagnosed claimant with cervical pain, fibromyalgia and status post discectomy. Dr. Mills was asked on several occasions whether he felt claimant's work-related activities could have aggravated her cervical condition. Dr. Mills stated that, while it was possible there could be a work-related aggravation, it did not rise in his mind to a reasonable degree of medical probability. Dr. Mills, on several occasions, used the word "possible" but would not find within a reasonable degree of medical probability that claimant's work aggravated her preexisting neck condition.

The Administrative Law Judge in denying claimant benefits found most convincing that Dr. Mills spoke of possibilities and not probabilities. Dr. Mills' discussions concerned not only claimant's cervical problems, but also claimant's ongoing carpal tunnel problems. At no time was Dr. Mills willing to give an opinion within a reasonable degree of medical "probability."

Claimant's attorney argues that the Administrative Law Judge adopted Dr. Mills' opinion based purely on the fact that Dr. Mills was the court appointed independent medical examiner. Claimant's attorney objected to this blind allegiance to independent medical examining doctors. The Appeals Board understands the significance of an independent medical examination when there is an ongoing dispute between medical experts. An independent medical examination report can be a valuable tool used by the administrative law judges in determining an injured employee's true limitations.

Nevertheless, blind allegiance to an independent medical examining doctor would be inappropriate. It is the obligation of the fact-finders to weigh the evidence, including both its accuracy and its credibility, when deciding questions of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991). The Administrative Law Judge adopted the opinion of Dr. Mills. In this instance, the Appeals Board agrees with the Administrative Law Judge's decision. Dr. Mills spoke only in terms of possibilities, and not of probabilities. Dr. Murati was not provided a complete history of claimant's prior problems and acknowledged that, based upon his review of Dr. Shapiro's medical records, claimant's problems were a natural and probable progression of her 1994 neck injuries.

Therefore, the Appeals Board finds that claimant has failed to prove that her ongoing problems are related to her employment with respondent. It is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). Claimant has failed to do so, and the Administrative Law Judge's denial of benefits is proper.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated July 26, 1999, denying claimant benefits in the above matter should be, and is hereby, affirmed.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent to be paid as follows:

Ireland Court Reporting, Inc.	
Transcript of preliminary hearing	\$153.20
Transcript of regular hearing	\$124.60
Court Reporting Service	
Deposition of Pedro A. Murati, M.D.	\$141.25
Schaefer Court Reporting	
Deposition of Philip R. Mills, M.D.	\$182.90
Transcript of stipulation	Unknown
Deposition of Leslie Page, D.O.	\$256.90

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Tom E. Hammond, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director